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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/821,900	04/12/2004	Marc Ramet	237990US26	2487

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EXAMINER

LE, HUYEN D

ART UNIT	PAPER NUMBER
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3751

DATE MAILED: 10/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/821,900	RAMET, MARC	
	Examiner	Art Unit	
	Huyen Le	3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 August 2006.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-83 is/are pending in the application.
- 4a) Of the above claim(s) 9 and 59-73 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 74-83 is/are allowed.
- 6) ☒ Claim(s) 1-6, 8, 21-27, 31, 44-49, 55, 57 and 58 is/are rejected.
- 7) ☒ Claim(s) 7, 10-20, 28-30, 32-43, 50-54 and 56 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>04/12/04 & 08/30/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of species II, subspecies A in the reply filed on 08/02/2006 is acknowledged. The traversal is on the ground(s) that the restriction requirement fails to identifying which structures are patentably different and why. This is not found persuasive because species I, depicted by Figures 1-3, is structurally different from species II, depicted by Figures 4-9. Figures 1-3 show the applicator connects to the handle 2 via a resilient coupler 7 and the reservoir has a slot 16 for engaging the applicator 12. Figures 4-9 show the applicator 12 rotatably connects to the handle 2 via a pivot 30 and the handle 2 has a chamber 38 for sealingly covering the pad 35 of the reservoir. These are independent inventions where they are not connected in design, operation and effect. The facts relied on for this conclusion are in essence the reasons for restriction. See MPEP 808.01(a).

The requirement is still deemed proper and is therefore made FINAL.

Currently, claims 1-8, 10-31, 33-58, 74-83 are readable on species II, subspecies A.

Claims 9 and 59-73 have been withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to the nonelected species, there being no allowable generic or linking claim.

Drawings

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "reservoir integral

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with the cap", "the cap in a mounted position on the grasping element, a dispensing aperture in the reservoir emerges at an outer circumference of the cap", "a dispensing aperture in the reservoir emerges in a recess in the cap receiving the applicator" must be shown or the features canceled from claims 49-51. The "slot is elastically deformable to allow forcible insertion and withdrawal of the applicator from the slot" must be shown or the features canceled from claims 53-54. No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-3, 5, 6, 22, 23 are rejected under 35 U.S.C. 102(e) as being anticipated by Glover et al (6,508,255).

The Glover et al reference discloses a device for applying a product to a surface comprising: a grasping element 6; two arms 1a,1b mounted on the grasping element via a junction; and an applicator 4 between the two arms 1a,1b; the two arms are at least partially elastically deformable.

Regarding claim 2, the applicator 4 is at least partially elastically deformable.

Regarding claim 3, at least one of the two arms is at least partially elastically deformable.

Regarding claim 5, each of the two arms has a free end, and the two arms form an arc and support the applicator between the two free ends.

Regarding claim 6, the applicator 4 includes a filament portion applicable against said surface in a direction orthogonal to a principal lengthwise axis of the grasping element 6.

5. Claims 1-4, 8, 21-27, 31, 44-49, 55, 57,58 are rejected under 35 U.S.C. 102(b) as being anticipated by Bunnell (1,666,116).

The Bunnell reference discloses an applying device comprising: a grasping element 22; two arms 20 mounted on the grasping element 22 via a junction 19; an applicator B between the two arms 20; and a reservoir 10, wherein the grasping element 22 connects to the reservoir 10 in a position preventing the applicator from being charge when the applicator is applied against the surface (shown in Fig. 4).

Regarding claims 8 and 31, the grasping element 22 is detachable from the two arms 20.

Regarding claim 45, the grasping element 22 serves as a closure capsule for the reservoir 10.

Regarding claim 46, the grasping element 22 facilitates attachment to the reservoir 10.

Regarding claims 47 and 48, the reservoir 10 has one end constituting a cap capable of being held on the grasping element so that applicator is concealed in the cap (Figs. 1-2).

Regarding claim 49, the reservoir 10 is integral with the cap.

Allowable Subject Matter

6. Claims 7, 10-20, 28-30, 32-43, 50-54, 56 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

7. Claims 74-83 are allowed.


Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Zajicek teaches an applicator for eye lashes.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Huyen Le whose telephone number is 571-272-4890. The examiner can normally be reached on Monday-Friday from 9:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on 571-272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Huyen Le
Examiner
Art Unit 3751

October 6, 2006